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Balancing Transparency, Privacy, Technology, and Efficiency: Implementing Broome County's Freedom of Information Law in the 21st Century

Jennifer K. Royer
Drew University

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BALANCING TRANSPARENCY, PRIVACY, TECHNOLOGY, AND EFFICIENCY:
IMPLEMENTING BROOME COUNTY'S
FREEDOM OF INFORMATION LAW
IN THE 21ST CENTURY

BY

Jennifer K. Royer

BA, Drew University, 2005

CAPSTONE PROJECT

Submitted in partial fulfillment of the requirements for the degree of Masters in Public
Administration in the College of Community and Public Affairs
Binghamton University
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2011

Accepted in partial fulfillment of the requirements for
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2011

Kristina Lambright _____
Assistant Professor
Department of Public Administration
April 25, 2011

Nadia Rubaii-Barrett _____
Associate Professor
Department of Public Administration
April 25, 2011

Eric S. Denk _____
Former Clerk of the Broome County Legislature
Broome County Government
April 25, 2011

Executive Summary

All state and municipal governments are required by the New York State Freedom of Information Law (FOIL) to release government documents to the public and the media when requested. Broome County has an active FOIL program which must adapt to continuing changes in technology. Several policy and public management options could help the county better utilize electronic methods while balancing competing pressures, making its FOIL program one of the most efficient and cost effective programs in the state.

This paper reviews literature regarding the competing pressures of: transparency in a democratic society, the legal guidelines governing the release or protection of information, and constantly changing technology. These competing pressures were then reviewed in context with their effects upon local governments, such as Broome County. The county must balance transparency, state mandated processes, as well as limited staff and financial resources in the most cost effective and efficient manner possible.

A mixed methods study was undertaken in order to determine how the current records management and records provision methods affect the FOIL program in Broome County. Secondary data collected from 2006-2010 during the implementation of FOIL was analyzed using quantitative data techniques. Interviews were then conducted with six administrators from departments that received the most FOIL requests. The qualitative information garnered from these interviews provided clarification and context for the quantitative data analysis.

An examination of the literature and the mixed methods analysis led to five findings on the effects of technology on Broome County's FOIL program. The findings include that: (1) FOIL keeps local government accountable and encourages accurate maintenance of records; (2) FOIL keeps local government accountable and encourages accurate maintenance of records; (2) FOIL provision requires significant employee time; (3) FOIL provision and new technology are expensive, yet Broome County has limited funding resources; (4) technology can make FOIL more efficient and cost effective over time; and (5) there are remaining legal barriers to electronic records maintenance and provision.

These findings led to the development of five recommendations that may help Broome County move its FOIL program into the 21st Century. Broome County should: (1) update its FOIL resolution and corresponding documents to comply with state law, (2) continue to receive requests by all manners presently accepted, (3) implement a workflow system to track requests, (4) periodically review technology leases and assets as well as records management policies, and (5) lobby the state for various legal and policy changes to FOIL. Government managers and employees will eventually have to create policies and apply technology in ways that allow government to increase efficiency and cost effectiveness while collaborating with its citizens.

Dedication

To my loving parents:

I never would have dreamed of reaching the goals I have achieved without their support.

For my mom, Joan M. Royer, who never puts herself first, standing by me throughout my life and through the long nights of working on many a paper.

For my dad, Keith E. Royer, who has always been there with support and pride, and the best sense of humor to lighten any tough situation.

“Let the beauty we love
be what we do.”

~ Mawlana Jalal-al-Din Rumi

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I am indebted to my undergraduate professor, mentor and friend Dr. Donald G. Jones who encouraged me to seek a career in public service. I am grateful for the time, advice and encouragement he bestowed upon me and will forever hold his spirit in my heart.

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I am thankful for the Broome County Public Library's Director Lisa Wise for her help in obtaining the literature needed to complete this Capstone Paper.

I would also like to thank the department heads, lawyers and colleagues at Broome County Government with whom I spent many a day delving into questions and issues about FOIL.

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Problem Definition

Broome County, like many local governments, is facing pressure from the public, media and state government to move its Freedom of Information procedures into the fast-paced technological age. The broader pressures faced by local governments are how to comply with state government mandates and implement initiatives which increase transparency and accountability while facing severe fiscal limitations.

New York State first enacted the Freedom of Information Law (FOIL) in 1974, creating the Committee on Open Government to oversee FOIL. In 1978, the law was expanded, increasing the public's right to access information on government activities (NYS Department of State, 2011). The law covers both state and local government jurisdictions and required counties to adopt a resolution implementing FOIL, providing public access to county government records. Broome County adopted its first Records Access resolution in 1974, with significant amendments in 1978 and 1986. The State has periodically updated its law requiring procedures to keep pace with advances in technology. For example, the State amended its law in 2006, requiring that requests be accepted electronically. Broome County created an email address to receive requests in 2007 and an online submission form in 2009. The public can also make written requests in person, by mail or by fax, using a form available in the office, providing flexibility in the application process. Although Broome County implemented the required electronic procedural updates, its FOIL resolution has not been updated since 1986.

The state-mandated updates have been good for the process, but Broome County has been slow to implement other in-house procedures using technology. Currently, most Broome County departments do not respond to requests electronically. For instance, when a request for department records is received by Records Access personnel via the online form, the request is

forwarded by email to the department contact with the submission attached, giving a due date for response. Many departments respond with a paper record since many county records are not maintained electronically. Even some response memorandums summarizing information or reasons for denial come on paper so department heads can use original signatures on departmental letterhead. Paper responses must be mailed to the requester. Time and money spent on printing, copying and mailing the information is unnecessary, turning what started as an electronic process into a paper process. Composing the letter on electronic letterhead and using electronic signature files or scanning the document could save time, paper and postage.

A seven month review of postage expenses from June to December of 2010 was conducted to determine how to decrease costs associated with mailing information to applicants, and the potential savings to Broome County if more requests were provided electronically. The study showed the average cost of postage per month to be \$22. The annual cost of postage (approximately \$266) compared to 2010 estimated annual revenue (\$1,200) is 22%. FOIL revenue is obtained by charging for copies. The state allows the county to charge \$0.25 per page copied for any applicant. Broome County passed a resolution in 1999 which allowed the Records Access Officer to waive the fee for copying records if the fee is one dollar or less (Broome County Legislature, 1999). Table 1 provides a visual representation of the study of FOIL mail usage. The table shows that most communications were sent with no fee charged to applicants. Many of these requests could have been scanned and emailed or picked up. While open government is expensive, there are ways to reduce costs while increasing efficiency.

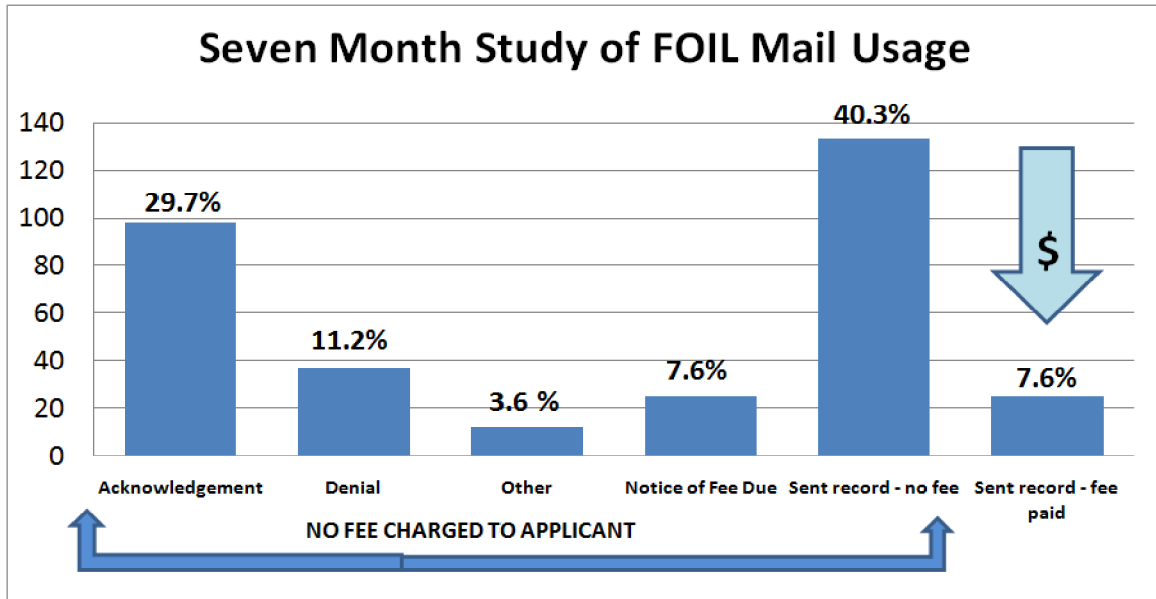


Table 1: Seven Month Study of FOIL Mail Usage at Broome County

Additionally, in the Records Access Office, the in-house log tracking requests received on paper is kept hand written in a green three-ring binder, which is inefficient and at times confusing. It does not track all significant data, and requires time-consuming manual searches for information. An electronic log could decrease the time required to determine whether applicants or organizations owe fees associated with prior requests. Office policy requires previous payment before further requests are honored. Improving the efficiency of searches would be helpful, since the volume of Broome County's FOIL requests has increased with the implementation of electronic submission, as seen in Table 2.

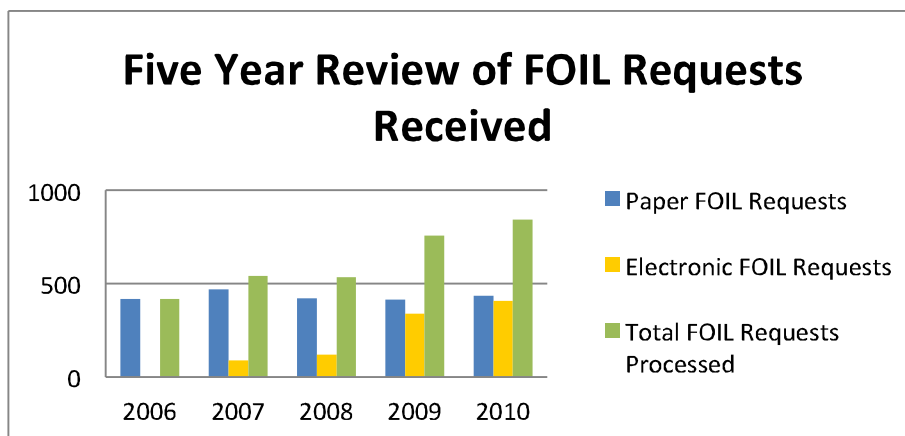


Table 2 - Five Year Review of FOIL Requests Received by Broome County

Also, paper correspondence with applicants is only retained for six months, according to NYS Records Retention Law. While the long-term retention of records is not necessary, historical data derived the records could be useful. A comprehensive electronic database which retains data from requests could cumulatively create statistics regarding the amount of paper used annually, the number of requests granted, partially denied or denied, and the reasons for denials over time. For instance, various State and Federal laws call for denial of access to or redaction of certain records. If these laws are not followed accurately by those providing access, the government is open to significant liability (Austin & Stenberg, 2007). By tracking reasons for denial or redaction, the county could demonstrate that it is accountable, transparent, and compliant while protecting confidentiality.

Efficient and accurate provision of records is an essential part of democratic government. New York State law states in its Legislative Declaration "...that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government..." (NYS Public Officers Law §84, 2010). Instead of simply following the law by updating the resolution regarding FOIL, Broome County could become a leader in New York State by using electronic methods to modernize FOIL provision. Though there are times when certain technologies cannot be used for various legal and situational reasons, the county in many cases could use technology to increase transparency and accountability to constituents. These updates could save money, increase efficiency, improve communication with constituents, and enhance data collection that could inform better FOIL procedures. "Automated records management systems provide a cost-effective alternative to the labor-intensive, time consuming, and often costly traditional models of record management" (Austin & Stenberg, 2007).

This Capstone paper focuses on how electronic methods could affect FOIL implementation. It asks the question: what are the potential consequences of using technology to upgrade records access procedures during the implementation of Broome County's Freedom of Information Law?

Literature Review

If Broome County Government is to improve its implementation of FOIL it will need to balance competing pressures. These pressures are: the value of transparency in a democratic society, legal guidelines governing the release or protection of information, and constantly changing technology. To understand how all of these forces influence policy and management options available to Broome County, a brief discussion of each is provided below, followed by an examination of their combined effect.

The Value of Transparency

The power of a democratic government originates with the people. Policies made at the local government level directly affect the daily lives of constituents; organized interest groups together with local elected officials can create variations in policy implementation (Gerston, 2008). The core values of transparency and accountability, when incorporated into organizational action, creates a connection between individual needs and the common good, and this is imperative to improving communication and developing openness, oversight, efficiency and trust which strengthens government (Gerston, 2008; Arellano-Gault, 2008). As Thomas Jefferson said, "...wherever the people are well informed they can be trusted with their own government" (Thomas Jefferson Encyclopedia, 2007, np). The popular sovereignty concept allows adults the right to know government's business. That business can only function under the watchful eye of

its constituents; receiving the public's approval allows government to remain secure and stable (Dahl, 1995; Relyea, 1978). An effective and efficient FOIL program which maintains the security and privacy of constituents can also benefit government by helping constituents appreciate their citizenship and participate more fully in society.

Legal Issues and Electronic Records Provision

While efficiency is essential to creating a more effective FOIL program, any changes to Broome County FOIL procedures must be made within the legal framework of New York State FOIL. As stated earlier, FOIL encompasses all government agencies in the state. New York State Public Officers Law §87 (1) (a) and (b) states that the governing board of each public agency should pass uniform rules and regulations that are in accordance with the rules set by the Committee on Open Government (2010). Broome County has a FOIL Resolution, though it has not been updated in twenty-five years. When amendments were made in 1986, the entire resolution was not included in the revision and cannot be easily referenced as a whole in any Journals of Proceedings (Broome County Legislature, 1978 & 1986). This oversight has resulted in confusion for those trying to follow local policy; therefore, state law is more often used.

While transparency is the most obvious value evident in FOIL, the law also balances the value of privacy. State law promulgates eleven reasons why records must be withheld from those who request them (See Appendix A). Denials generally apply to information that if released could cause harm to individuals or businesses (NYS Department of State, 2011). While some records cannot be released in totality, they may be released with sensitive information blacked out (NYS Department of State, 2011). Redactions make providing some records electronically difficult because the material must be copied, then blacked out by an employee with knowledge

of the law, and re-copied to render the un-releasable material unreadable. A recent FOIL amendment also requires that if a government agency has the means, electronic requests must be accepted and provided electronically unless electronic provision takes more employee time than manual retrieval, or the record requires manual redaction. (NYS Public Officers Law §89 (3) (a)-(b), 2010).

The Effects of Technology on Open Government

The recent state amendments regarding electronic provision of FOIL have shown that the advance of technology is inevitable. Governments that proactively release information by posting frequently requested records on their web sites derive cost savings previously incurred through repeated FOIL requests (New York State Committee on Open Government, 2010; Schlomach, 2008). However, for some of this information to be truly useful, it requires analysis and explanation (Allison, 2010). Some information is not important based on the answers provided, but because it opens government and allows people to engage in the process and find answers and solutions themselves (Swartz, 2010).

Easy public access to information can benefit government since public review often spurs new ideas, creative solutions and economic development (New York State Committee on Open Government, 2010; Schlomach, 2008). As technology continues to become more engrained in our society, all levels of government will realize that electronic information is the future of communicating the public's business and the public will have access to information that has always belonged to them in a democratic society (Brigo, 2010). Technological, societal and cultural shifts will lead to innovation and will open government to new levels of participation (Noveck, 2009). Not only will constituents be able to research issues of interest and participate

more in government, but also aid public officials and advisory committees with the information garnered from their analysis of online records and other research (Noveck, 2009).

The main hindrance to posting government records online is fear of loss of privacy. Fear, however, should not mean limiting FOIL to paper records and manual retrieval. Government cannot be cost efficient using paper files in a technological world (Eggers, 2005). That said, FOIL efficiency does not require proactive disclosure of all records on websites. Some information, such as public safety reports and some health reports cannot be proactively disclosed; exceptions to disclosure in FOIL protect case investigations and personal privacy (NYS Public Officers Law §87 (2) (a)-(k) & 89 (2) (a)-(b), 2010). Information systems which uphold the values of security and privacy can be obtained or developed allowing record storage in formats that provide faster search and provision times (Eggers, 2005; Jonas & Harper, 2010). Where redaction software is not available, sensitive records could be printed, redacted and then scanned back into the system for storage and linked to the original copy.

The Context for FOIL in County Government: Transparency, Law and Technology

County governments are positioned between municipal governments and state and federal governments, and frequently serve a dual purpose by providing required services for the state in addition to municipal services required by the community (Kincaid, 1999). The reality is that counties must consider the issues of transparency, the law and technology within a context of limited financial resources. As counties adjust to providing more services on tighter budgets, government managers will be required to value efficiency, in addition to openness, community participation and an interest in what constituents think and do (Menzel, 1999). Proactive disclosure and other technologies can help government become more transparent, as well as

reduce repetitive costs associated with administrative duties, copying fees and mailing fees (New York State Committee on Open Government, 2010; Schlomach, 2008). Despite reductions in general overhead costs, information technology systems are expensive; further, provision of electronic records does not bring in direct FOIL revenue. In addition, local governments have less state funding and fewer dollars to invest in technology (Eggers, 2005).

When local governments invest in new technology, administrators can ease the transition for employees, since employee resistance to change is natural (Eggers, 2005). Managers can take the lead by training and empowering employees through inclusion in the decision-making process (Menzel, 1999). While some jobs may no longer be necessary, other jobs will emerge focused on helping citizens use technology-based services, which evidence shows, increases demand for information (Eggers, 2005).

Methodology

Technological advances will continue to change the way government does business. Since government collects large amounts of data, I created an extensive electronic database to track usage of Broome County's FOIL program from data maintained by the Legislative Clerk's Office. I then analyzed this data using quantitative methods, mainly descriptive statistics. Qualitative information from interviews with six Broome County administrators whose departments frequently receive FOIL requests provided a context to clarify and expand upon my secondary data analysis.

Benefits and Detriments of Mixed Methods Data Collection

FOIL data collected between 2006 and 2010 by staff at the Broome County Legislative Clerk's Office tracked requests and provided some information for its Annual Report. This pre-

existing secondary data from paper records was entered into an excel database for analysis. This allowed far more information for analysis than could have been gathered manually during the given time frame of the Capstone course. Descriptive statistics are useful when trying to summarize the relationship and distribution of multiple variables (Schutt, 2009). There is, however, the potential for un-tracked data regarding requests; some requests received by departments may be filled by them directly without ever being tracked by the Records Access Officer. Also, using secondary data can have disadvantages if certain data is not tracked or measured in a preferred way (Schutt, 2009). However, except for data from 2006, I was the one collecting the data for FOIL requests. Beginning in 2008, I tracked additional information such as the time elapsed between receipt of the requests and fulfillment by the department, the reasons for denial, and the number of pages provided. All other available data had already been tracked on paper.

Quantitative data analysis cannot explain everything. Therefore, interviews provided qualitative context for what the data showed. Interviewing can be difficult. Subjects may use their public voice instead of being completely honest, or the interviewer may miss the chance to ask clarifying questions (Seidman, 1991). Because I worked with the FOIL program at Broome County for four years, however, I have a good understanding of the program and was able to develop substantive questions. Having built a trusting rapport with administrators in Broome County Government, I felt comfortable contacting the six potential subjects via email to ask for their participation in the qualitative research section of this study. Using a personal approach can increase the response rate when requesting interviews and may lead to more thoughtful answers (Schutt, 2009). My personal contact with administrators led to a 100% rate of response from the six administrators contacted. I also conducted all six interviews using the same semi-structured

question format (Appendix B) to increase consistency, decrease variability, and provide a basis for comparison and analysis of responses.

Secondary Data Analysis

In order to determine how technology affected the implementation of FOIL, the data was analyzed for the time period in which the technological changes were applied to the program. In 2006, there was no way to request records via email or through Broome County's website; therefore, the data from this period provided a control for comparison to future data. In 2007, an email address was made available to the public, allowing applicants to email a completed form as an attachment or make a written request via email. In early 2009, the Records Access Office created an online submission form which helped applicants make electronic requests via the County's website. The office also developed an information business card (Appendix C) to educate both employees and constituents about the FOIL process without implementing a large and potentially expensive education program. These cards were distributed to the departments which had frequent contact with the public. In 2009, there were also changes made to the wording of the online and paper form and to various memos and letters which the Records Access Office uses to communicate more clearly with both the applicant and the departments holding the information. These changes were made to decrease applicant confusion regarding necessary request information and to make department heads more aware of the time frame required by New York State Law. Also, in 2009 there was a general roll-out of multi-function printers with scanning capabilities in county offices. In 2010, in addition to the seven month review of postage expenses (Refer to Table 1), the Information Technology Department provided each department with direct access to the website and trained employees on how to post information to the website.

The data compiled during the implementation of FOIL provided significant information. The Records Access Office tracked the number of requests received annually, the department from which information was requested, the amount of time each department took to respond, and whether the department granted, partially denied or denied the request. If denied, the reason for denial was also tracked. If granted or partially denied, data was tracked on whether the record was provided on paper or electronically. If the request was granted on paper, the number of pages provided was tracked, including whether the applicant was charged. That fee amount was tracked, including whether the applicant paid.

The number of requests received annually shows the impact of technology on FOIL when compared to the various changes implemented from 2007-2010. Using 2006 data as the control base period, I reviewed the amount of paper and electronic requests received by the Records Access Officer. I then reviewed the number of days taken to provide requests to determine how many requests took more than a week or two to provide. I also reviewed how many requests were made by email or through the electronic submission form. In order to ascertain potential consequences, I also tracked changes in revenue brought in, since under State Law the county cannot charge a fee for information provided electronically.

Interviews for Qualitative Analysis

Interviews, conducted with six department heads, focused on FOIL implementation and aided in understanding the secondary data collected. Purposive sampling was used to identify which departments to include in the study; departments were selected based on those receiving the largest number of FOIL requests as reported in the secondary data described above. I chose to interview the heads of departments because they receive the FOIL requests from the Records

Access Officer. These administrators then delegate the request to staff members and are responsible for the review and completion of the request in a timely manner. The interviews were conducted from March 22, 2011 through March 28, 2011, lasted between thirty minutes and an hour, and were audio recorded. Respondents were assured that the information they provided would be kept confidential, and all signed releases stating that they agreed to participate in the study and be audio recorded, as required by the Binghamton University IRB (Appendix D). All recordings were deleted when the study was published.

Interviewees were asked semi-structured interview questions (Appendix B). The questions covered their general opinions of FOIL and its impact on their departments, as well as how their department processes requests, and the technological processes their departments use. Department heads also discussed whether technology makes records provision easier or more difficult, whether their records are maintained mainly on paper or electronically, and the hindrances to using technology. They were also asked about the potential for proactive disclosure of records on Broome County's website. In addition, interviewees noted which employees most frequently worked on requests and estimated the number of hours spent. This information led me to submit my own FOIL request for more secondary data regarding departmental salary information, which allowed me to give a rough estimate of monthly and annual personnel costs incurred by each department related to FOIL. Therefore, the combination of quantitative analysis of secondary data and qualitative interview research helped lead to more accurate findings and applicable recommendations.

Findings

Analysis of secondary data and interviews reveal several findings. The first finding relates to the importance of open government. The next finding shows that FOIL requires significant employee time. The third and fourth findings point out that the considerable expense incurred during FOIL compliance makes investing in new technologies difficult, even though technology could make FOIL implementation more efficient and cost effective. The final finding shows that there are significant legal and policy barriers to electronic record provision.

Finding #1: *FOIL encourages government to be accountable and to keep records accurately.*

All department heads interviewed believe FOIL makes government more transparent to citizens. One administrator said “Government sometimes operates in its own little world...but, if it’s open and available for people to review, then more will get involved and that’s what’s needed to better our government.” Four department heads also believe that FOIL encourages departments to be more accurate and accountable, not only during record creation, but also with record maintenance so searches are efficient. All administrators interviewed firmly believe that government records should generally be open to constituents. However, four noted that overly broad requests tend to take more time. These requests are made by people unsure of what to request or by people upset with the county who use FOIL as an opportunity to make frivolous requests and waste a department’s time. However, these requests are not typical; all managers believe open government and availability of records is valuable since most citizens have legal matters or legitimate questions regarding the operation of government.

Finding #2: FOIL requests require a significant amount of employee time.

While FOIL is a useful tool for constituents, five department heads noted that the largest impact FOIL has on their department and Broome County as a whole is the time it takes to locate and review requested records. One manager noted that because FOIL requires a response to applicants within five business days, "...it has to take precedence over something else which actually may be more important." While FOIL allows the department to ask for more time, up to twenty business days, they try not to use those days unless necessary. One administrator said, "There are days when my [employees] don't do anything but FOIL requests."

While all administrators state that inter-departmental communication is good, five administrators noted there is confusion over which department maintains certain records. While all department heads noted that the department maintaining the record is eventually found, a fair amount of time is spent by both departments trying to locate a record which may be maintained elsewhere. One administrator added that though inter-departmental cooperation is good, the first department to fill part of a complex request currently has no way of knowing how the process is moving along in other departments once it leaves his/her department. This can leave an administrator wondering whether the request has been reviewed and completed by other administrators.

Interviewees also noted which employees regularly work on FOIL requests and the average time spent on requests. All managers said that the time spent depends on the information requested under FOIL. Using an estimated average provided by each interviewee and data on salaries provided through a FOIL request, the rough estimate of salary costs for the six departments receiving the greatest number of FOIL requests is shown in Table 4.

Estimated Cost of Employee Time in the Six Departments at Broome County Most Active with FOIL Requests					
	Number of Employees Involved in FOIL Requests	Average Hourly Salary of Employees Involved	Average Department Hours per Week on FOIL	Estimated Average Monthly Cost of FOIL	Estimated Annual Cost of FOIL for each Department
Department A	2	\$ 25.83	18	\$ 1,859.40	\$ 22,312.80
Department B	4	\$ 31.32	4	\$ 501.04	\$ 6,012.48
Department C	4	\$ 24.97	5	\$ 499.45	\$ 5,993.40
Department D	2	\$ 26.05	1	\$ 104.18	\$ 1,250.16
Department E	3	\$ 29.27	1	\$ 117.09	\$ 1,405.12
Department F	5	\$ 29.67	2	\$ 237.36	\$ 2,848.32

Table 3: Estimated Cost of Employee Time in the Six Departments Most Active with FOIL

***This estimate only involves the top 6 departments. On average 33 departments receive FOIL requests.**

While most FOIL requests are routine, taking only a few hours a week to locate and review, there are other requests which are more complex and time-consuming. One administrator noted that while employees fill most requests easily, there are times they "...spend three days, full time, working on a request." These requests can take employees and managers days to compile and review. For example, in 2009 there were 748 unique requests for records; 80.8% of these requests were filled by the department in five days or less. Only 15.2% required the Records Access Officer to notify the applicant that an extra week was necessary to compile the request; 3.9% required notification that more time was necessary. Table 5 shows a breakdown of the number of days departments took to provide access, demonstrating that provision for most requests is relatively quick. However, there are occasional time-consuming requests.

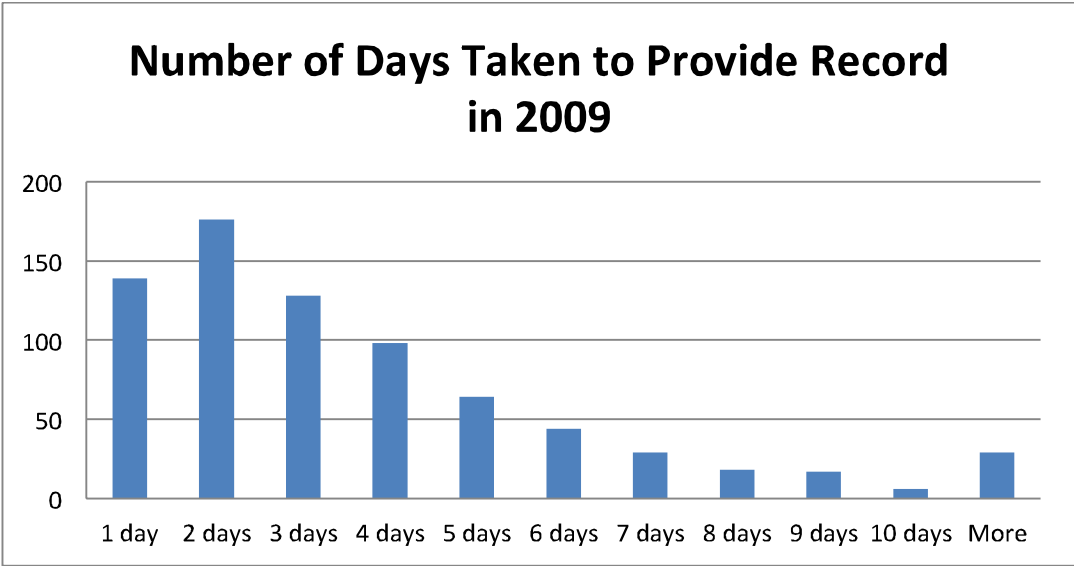


Table 4: Number of Days Taken to Provide Record in 2009

Five departments are positioned to move forward with proactive disclosure. One administrator noted that after staff reductions, they began proactively releasing records through their website. This practice, as well as requests received by email, has reduced the employee time spent on FOIL provision by five hours a week. Another administrator noted that proactive posting of some departmental reports on the website might encourage potential offenders to better follow laws, since those records identifying their failures would be readily accessible to the public. Other departments noted that they are willing to post more on the internet, but want to review legal restrictions to establish which records should not be posted. Also, there are often thousands of records; employees must determine not only how to find time to convert records from paper to electronic, but also how to organize and post them online. In addition, the storage media and archiving software is expensive and already being taxed, since more records are stored every day. One administrator noted, “We just don’t have the money to buy the newer technology or the time to implement it either with the staff that we have, so we’re...lagging behind.”

Finding #3: *There are various financial costs to FOIL provision and limited revenue sources.*

In addition to the costs associated with employee time, there are other various overhead expenses, such as for technology and postage, connected with FOIL implementation. Table 4, displayed in the discussion of Finding #2, shows that the annual cost of providing FOIL for the six departments with the most FOIL requests, is estimated to be \$40,000 in labor. This estimate does not include the time spent by employees in the Records Access Office or the Law Office processing and reviewing requests. Revenue from the program is negligible when compared to the cost. Table 6, a five year review of revenue from FOIL, shows that Broome County's revenue averages \$1,300 a year. Revenue is likely to decrease as more information is provided electronically through email or on the county's website. The goal is for new technology to increase efficiency and decrease requests, as seen with the department that reduced employee time through proactive disclosure.

FOIL Revenue for 2006-2010				
<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
\$1,573.46	\$998.25	\$1,171.75	\$1,608.48	\$1,233.48

Table 5: FOIL Revenue for 2006-2010

As stated before, the current FOIL in New York State does not allow agencies to charge for electronic records and only allows \$0.25 per page for paper copies. Four administrators noted that many repetitive requests come from companies seeking government records to save themselves time and money. One commented that "...it's not the public asking for the document, it's this company asking for our [record] so that they can sell it; they can market it." Because FOIL doesn't have a categorized fee structure, these companies are charged the same as individuals requesting information. Another administrator added, "We're reducing the expenses

on their end because we're providing them this information and I think that should have a dollar amount attached to it."

Finding #4: *Technology can create efficiencies which save time and allow faster records provision.*

Despite the financial costs of FOIL provision and limited revenue sources, four administrators who were interviewed for this study found the technology already in place has led to greater efficiency. For example, three interviewees felt the new online request form helped departments respond quicker to FOIL requests. One administrator commented that "[Receiving email requests] really sped the process along...receiving them by email was a step in the right direction." Four interviewees said it is easier to email the request to employees and save paper. Further, one department head noted as more citizens use the online form to request access to electronic records, county employees will reactively develop methods to increase electronic provision. As of now, however, Table 2, previously displayed in the problem definition section, shows while more applicants have begun using the online/email methods, a consistent number still prefer hand-written requests.

One administrator also suggested changes to the online form and memo, saying that people seem to be less specific when requesting records electronically. Another stated that some requests should be viewed as an opportunity to establish a dialogue with constituents in order to determine what records will actually help them. However, both of those administrators felt that the online form made the process more efficient and easier for both constituents and employees; citizens seem to prefer the online form, compared to email.

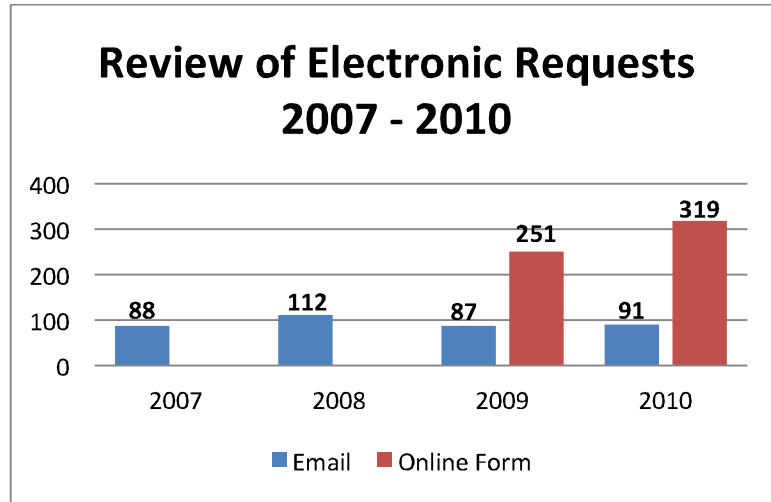


Table 6 – Review of Electronic Requests 2007-2010

As shown in Table 6, the number of citizens using the email address has not changed much. Table 6 also illustrates that more people began making requests online once the new form was introduced. The online form accounted for 74.3% of electronic requests in 2009 and 77.8% of electronic requests in 2010. This suggests that electronic requests made via the online form may continue to increase. If this occurs, demand by the public for electronic records will most likely encourage the county to do more electronically and proactively.

Finding #5: *Some legal and policy barriers remain as government transitions into electronic records storage and FOIL provision.*

While electronic records work for some departments, four county departments with mostly paper based records systems cited either state law or county policy as the reason for not transitioning to electronic methods. Since the state requires counties to provide certain services, there are statutes that guide how they provide the services, and how they create and maintain records. One administrator said that New York State requires the department to provide an immediate copy of the record to the citizen. Another department head stated while similar

departments at other counties are creating and accepting records electronically, Broome County's Law Department still requires paper records at that department to maintain accountability with original signatures. If they were to provide records electronically, employees would have to scan the original records and develop a duplicate filing system for both electronic records and paper records. If electronic provision takes more time than manual provision, FOIL does not require electronic provision because it is neither efficient nor cost effective (NYS Public Officers Law §89 (3) (a)-(b), 2010); thus these departments continue to provide paper records.

Legal questions also exist regarding hardware and software leases held by certain departments. One department head noted that other departments have sophisticated technology that they could also use to transition to electronic records provision. However, departments such as the County Clerk's Office and the Department of Social Services which have that technology received funding from the state or are allowed to charge separately from FOIL for access to the records they maintain. Sharing sophisticated technology might not be allowed, or could involve added costs due to language in leases and licenses. One department tried to use simpler technology, like a smart pen for the creation of both paper and electronic records. However, that device led to errors when employees tried to connect data to the standard forms. Four administrators are looking into other technologies; but feel that with current legal restrictions, creating paper records is more cost effective and time efficient. However, one administrator said "If we could just electronically call up a record...then it doesn't matter if it's off-site or not...that'd [sic] be good." Another department head noted that available technology is still cumbersome since it is still developing and is often not created with government uses in mind. One administrator commented that others would like to move to electronic records, making searches easier and more efficient.

Recommendations

Broome County must adapt to continuing changes in technology while balancing the competing pressures of transparency, legal restrictions and financial limitations. My recommendations focus on policy and public management options that can make Broome County's records access procedures more efficient and cost effective. The first recommendation concerns legal compliance. The next three recommendations involve internal implementation or processes that will allow the county to realize greater efficiencies, cost effectiveness and the benefits of technology. The final recommendation concerns how Broome County can leverage influence and become a leader in open government by working with other counties through professional associations such as the New York State Association of Counties. The recommendations are also presented in the order that would allow for the most effective implementation.

Recommendation #1: *Broome County should update its FOIL resolution and corresponding documents to comply with the New York State Freedom of Information Law.*

As referenced earlier, Broome County's FOIL resolution has not been significantly amended since 1986. When these amendments were made, the entire resolution from 1978 was not included. A small amendment to the fee structure was also added in 1999. Since the entire resolution is outdated and unavailable anywhere in its entirety, an update would make Broome County's FOIL resolution consistent with the changes in state law and include the resolution in its entirety for the easy reference by future staff.

Also, FOIL states that all agencies should maintain a subject matter list detailing records maintained, regardless of whether they are releasable (New York State Public Officers Law

§87(3)(c), 2010). This list is supposed to be updated annually. The development of this subject matter list would not only allow Broome County to comply with state law, but would also cut down on confusion as to which department maintains certain records. Each department head could draft a list of the records maintained by that department and the Records Access Office staff could compile these lists into a searchable electronic database. While the state does not require municipal agencies to post the list on their website, a list of the records available could not only assist constituents with preparing their requests, but also help them understand how local government works.

Recommendation #2: *Broome County should continue to be flexible in how it accepts requests.*

Table 2 shows that requests for paper records have remained consistent over the last five years. It also shows that requests made electronically have grown annually since its inception in 2007. Table 3 demonstrates that requests made by email have remained consistent over the past four years, while the introduction of the online submission form has led to a substantial growth in requests. This demonstrates that citizens requesting records differ on their preferred method of communicating with government. Therefore, the county should continue to accept requests in all current forms in order to encourage the public's understanding of local government.

Recommendation #3: *Broome County should implement a workflow system to track records requests.*

The findings show that while departments communicate well initially, after the records have transferred to another department, the prior administrator is not always sure whether the request has been completed. Broome County has implemented workflow systems in order to track other important processes such as procurement. A workflow system for FOIL requests would not only show that a request has followed the proper process and been reviewed by all

applicable departments, but would also provide additional accountability. Accountability is important because the release of records is not only governed by FOIL itself, but also any other state and federal statutes which apply to those records. Department heads and the Law Department have a better understanding of the statutes than the employees in the Records Access Office. A workflow system would require department heads to sign off when records have been reviewed, whether it is allowing release or redacting portions of the record, or denying release of the record due to a specific statute.

Recommendation #4: *Broome County should periodically review leases for technology, departmental technology assets, and policies which affect records creation and provision.*

Though Broome County is becoming more technologically efficient, the state and the public will increasingly demand more be done with fewer resources. If leases on existing technology were reviewed periodically, they could possibly be re-negotiated to allow the sharing of hardware/software among departments or for the purchase of additional technology at more cost effective prices for use by several departments. In addition, other departments might be able to share technology; the cost of using the technology could be charged back to their budget line from the department that owns the technology following similar fee structures already in place at the county. For instance the County Clerk owns special scanning technology which could be shared with other departments. In addition to sharing technology among departments, county government should look for ways to partner with municipal governments and private companies to reduce the costs associated with new technology (Eggers, 2005).

Other county departments have purchased smaller equipment, like the smart pens. If this technology does not work for one department, it might help another department. By periodically

reviewing technological assets purchased by departments, the county could determine which technologies are being used effectively and which have been deemed ineffective. Another way to save money to afford new technology is to look for redundancies across departments and systems that create inefficiencies when software does not communicate (Eggers, 2005).

Broome County could also review policies affecting records creation. As noted in the findings, one department still has paper records because of a policy required by the county's Law Department. Broome County could review the practices of similar departments in other counties and determine the best practices for electronic records creation.

Recommendation #5: *Broome County should lobby the state to amend parts of the Freedom of Information Law and become part of the conversation on how to increase open government.*

The New York State Association of Counties (NYSAC) advocates on behalf of sixty-two member county governments. Broome County needs to work with professional organizations such as NYSAC in order for real changes to be made at the state level. This coalition of counties should petition the Committee on Open Government (COOG) for specific changes to FOIL. As stated earlier, COOG oversees FOIL provision in both state and local agencies. However, it can be difficult for those at the state level to know the concerns of those at the local level. NYSAC could relay potential amendments to FOIL to COOG and the State Legislature. One unifying issue might be the repetitive requests from companies. Administrators in other counties likely have the same concerns as our Broome County department leaders. Since information requested is more valuable to a company than it is to an individual, there should be a graduated fee structure similar to the one the Federal Government uses for the Freedom of Information Act (FOIA). FOIA has a provision in its fee structure regarding commercial use requests which apply

to requests that may benefit the commercial, trade or profit interests of a company or individual (National Security Archive, 2009). New York State would not have to create a fee structure for FOIL as intricate as the Federal Government's fee structure for FOIA. However, companies should be required to pay more for information which benefits their bottom line in any way. This potential amendment might appeal to all counties, as well as to the state, since it would be a revenue enhancement.

NYSAC could also relay other suggestions to COOG that could increase open government at the local level. If COOG collected annual reports created by the various Records Access Officers at all the different state agencies regarding the FOIL process and other transparency initiatives, these reports could be reviewed for best practices and then be placed on COOG's website. Information shared about policies which make it difficult to transition to electronic records provision and maintenance, as well as other suggestions, could not only improve FOIL programs in the state but also make New York State's FOIL program one of the best in the country. COOG could also reward local governments for technologically efficient transparency initiatives. For instance, an interviewee pointed out that Broome County was the first county in New York State to use an email archiving program and worked with the software developer to make the program better. Initiatives such as this should be rewarded by the state; such a reward would encourage local governments to upgrade their technology and increase their transparency.

Conclusion

Techno-optimists in society believe that technology can solve all or many of our current problems; techno-pessimists believe technology will lead to the end of freedom and privacy

(Homburg, 2008). In truth, technology is neutral; it is good or bad depending on how it is used (Eggers, 2005). Perhaps a better representation would be a third option: the techno-realist. I believe that those striving for more transparent and open government should endeavor to be techno-realists, developing programs that balance the benefits of technology while protecting against potential dangers. This is imperative since technology offers the advantages of information exchange and collaboration previously unavailable to government.

Though there are currently significant overhead costs for the program, FOIL is an essential part of our democracy. Without the proper technical tools, FOIL provision will become even more costly. The proper tools can help reduce the time employees take to search for records, reproduce records, and reduce mail costs. Technology has not caught up to what government requires it to do and government policies have not caught up to the technology available, making the issue of transitioning to electronic provision a double-edged sword.

Overall, improving and expanding open government initiatives such as FOIL can ultimately benefit all levels of government. Strengthening county governments also strengthens the state; if counties provide state and community services more efficiently, both save money. If the public views local governments as open and trustworthy, the state, by association, will also be seen as more open and trustworthy in the eyes of its citizens. Realistically, provision of FOIL will always be costly, but savings can be realized by using technology to develop efficiencies in the system. Transparency and accountability empower the public and show Broome County to be trustworthy in the eyes of the communities it serves.

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Appendix A
Reasons for Denial in Public Officers Law §87 (2)

§87 (2) (a)	Are specifically exempted from disclosure by state or federal statute;
§87 (2) (b)	If disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
§87 (2) (c)	If disclosed would impair present or imminent contract awards or collective bargaining negotiations;
§87 (2) (d)	Are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
§87 (2) (e)	Are compiled for law enforcement purposes and which, if disclosed, would: <ul style="list-style-type: none"> i. interfere with law enforcement investigations or judicial proceedings; ii. deprive a person of a right to a fair trial or impartial adjudication; iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
§87 (2) (f)	If disclosed could endanger the life or safety of any person;
§87 (2) (g)	Are inter-agency or intra-agency materials which are not: <ul style="list-style-type: none"> i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
§87 (2) (h)	Are examination questions or answers which are requested prior to the final administration of such questions;
§87 (2) (i)	If disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or
§87 (2) (j)	Are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.
§87 (2) (k)	Are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.

Appendix B
Semi-Structured Interview Question Instrument

For this first group of questions, I am asking you to consider the experience of your department since FOIL was established in the State of New York in 1974.

How important is the FOIL process and the citizens' right to know, in your opinion?

What do you think is the impact of the FOIL law in the State of New York on your department's operation?

What do you think is the impact of the FOIL law in the State of New York on local government in general?

Please explain the process of how your department complies with FOIL requests...

Have you seen any problems when a FOIL request requires the involvement of more than one department?

What issues are there with communication between various departments on difficult requests, such as with the Records Access Officer and the Law Department?

What technological processes has your department used in the past when creating records or providing access to those records as a result of a FOIL request (i.e. devices to electronically create documents, scanning, pdf software, web page designer, etc)?

What technologies, which the County currently has access to, do you feel could make the process more efficient for your department?

For this next group of questions, I am asking you to consider how FOIL has changed since 2006. The state began requiring electronic responses in 2006.

Did you or anyone in your department find the change to using new technology intimidating or especially difficult and why? What was your response to the issues experienced?

What were the benefits and what were the difficulties posed by these new procedures?

How many hours a week do you estimate that staff spends providing FOIL requests?

Which staff members are most frequently involved? How has the time commitment of responding to FOIL requests changed since the state began requiring electronic responses in 2006?

Has your department ever proactively posted on the County's website information which would likely have been requested frequently? Can you foresee any other documents that you could post on the website? If so, what are the technological hindrances to posting this information?

Appendix C

FOIL Information Card Created by the Legislative Clerks Office in 2009

How to File a Request for Records held by Broome County, NY

Freedom of Information Law Requests **must** be submitted in writing.
It may take a **minumum** of 5 business days to provide the record.
Requests may be submitted through our web site, by mail, by fax, or in
person at the Broome County Office Building, 6th Floor.

Eric S. Denk, Records Access Officer P.O. Box 1766
Email: FOIL@co.broome.ny.us Binghamton, NY 13902
FOIL Phone: (607) 778-2287 Fax: (607) 778-8869
Website: <http://www.gobroomecounty.com/foil>

Front of Card

The Freedom of Information Law is an 'access to records' law which applies
to all governmental agencies in New York State. The statute deals with
existing records maintained by a government agency.

*If you would like to review or obtain copies of a governmental record
or report, a request for records must be submitted in writing to the
Records Access Officer.**

Broome County only has access to records maintained by Broome County
Agencies and Departments. For municipal or state records, please contact
that agency directly.

****SOME EXEMPTIONS TO RECORDS ACCESS MAY APPLY.***

Back of Card

Appendix D
Human Subjects Protocol Approval

Date: March 4, 2011
To: Jennifer Royer, MPA
From: Anne M. Casella, CIP Administrator
Human Subjects Research Review Committee
Subject: Human Subjects Research Approval
Protocol Number: 1646-11

Protocol title: *Moving the Implementation of the Freedom of Information Law at Broome County into the 21st Century through Technological Measures*

Your project identified above was reviewed by the HSRRC and has received an Exempt approval pursuant to the Department of Health and Human Services (DHHS) regulations, 45 CFR 46.101(b)(2) .

An exempt status signifies that you will not be required to submit a Continuing Review application as long as your project involving human subjects remains unchanged. If your project undergoes any changes these changes must be reported to our office prior to implementation, using the form listed below: http://humansubjects.binghamton.edu/2009_Forms/012_Modification%20Form.rtf

Principal Investigators or any individual involved in the research must report any problems involving the conduct of the study or subject participation. Any problems involving recruitment and consent processes or any deviations from the approved protocol should be reported in writing within five (5) business days as outlined in Binghamton University, Human Subjects Research Review Office, Policy and Procedures IX.F.1 Unanticipated Problems/adverse events/complaints. We also require that the following form be submitted: <http://humansubjects.binghamton.edu/Forms/Forms/Adverse%20Event%20Form.rtf>

University policy requires you to maintain as a part of your records, any documents pertaining to the use of human subjects in your research. This includes any information or materials conveyed to, and received from, the subjects, as well as any executed consent forms, data and analysis results. These records must be maintained for at least six years after project completion or termination. If this is a funded project, you should be aware that these records are subject to inspection and review by authorized representative of the University, State and Federal governments.

Please notify this office when your project is complete by completing and forwarding to our office the following form: <http://humansubjects.binghamton.edu/Forms/Forms/Protocol%20Closure%20Form.rtf>

Upon notification we will close the above referenced file. Any reactivation of the project will require a new application. This documentation is being provided to you via email. A hard copy will not be mailed unless you request us to do so. Thank you for your cooperation, I wish you success in your research, and please do not hesitate to contact our office if you have any questions or require further assistance.

cc: file
Kristina Lambright

Diane Bulizak, Secretary
Human Subjects Research Review Office
Biotechnology Building, Room 2205
85 Murray Hill Rd., Vestal, NY 13850
dbulizak@binghamton.edu
Telephone: (607) 777-3818 Fax: (607) 777-5025